PLAINTIFF T-SCAN CORPORATION'S SURREPLY TO BPA TECHNOLOGIES, INC.'S MOTION TO DISMISS FOR IMPROPER VENUE (RULE 12(b)(3)) OR IN THE ALTERNATIVE REQUEST TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404 - 1

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| | 1 | | | |
|----|--|---|--|--|
| 1 | 1. Defendant BPA Technologies filed it Motion To Dismiss For Improper Venue | | | |
| 2 | or In the Alternative Request to Transfer Venue ("Motion") on April 29, 2010 at 5:14 pm. | | | |
| 3 | alleging that the Western District of Washington is an improper venue for this matter. Docket | | | |
| 4 | No. 3. | | | |
| 5 | 2. | Defendant then filed its Answer to the | ne Complaint on April 29, 2010 at 9:25 p.m. | |
| 6 | 3. | In its answer, Defendant denies Plaintiff's claim for venue properly lying in the | | |
| 7 | Western Dist | Vestern District of Washington (Complaint at ¶ 7, Docket No. 1; Answer and Counterclaims at | | |
| 8 | p. 2, ¶ 7, Docket No. 6). | | | |
| 9 | 4. | 4. In Defendant's Counterclaims, Defendant subsequently alleges that the Western | | |
| 10 | District of Washington is the proper venue for its counterclaims (Answer and Counterclaims at | | | |
| 11 | p. 8, ¶ 5, Docket No. 6). | | | |
| 12 | 5. | Consequently, Plaintiff asserts that I | Defendant BPA Technologies, Inc. has most | |
| 13 | recently admitted, unequivocally, that venue is proper in this judicial district and, as such, has | | | |
| 14 | constructively withdrawn its motion to dismiss or transfer the matter to another venue. | | | |
| 15 | Therefore, Plaintiff T-Scan respectfully requests the Court to deny Defendant's Motion on that | | | |
| 16 | basis. | | | |
| 17 | Dated | this 17 th day of May 2010. | | |
| 18 | | | Respectfully submitted, | |
| 19 | | | CARPELAW PLLC | |
| 20 | | | s/Robert S. Apgood | |
| 21 | | | Robert S. Apgood, WSBA #31023 Attorney for Plaintiffs | |
| 22 | | | CARPELAW PLLC 2400 NW 80 th Street #130 | |
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| 24 | | | Facsimile: (206) 784-6305 Email: rob@carpelaw.com | |
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1 **CERTIFICATE OF SERVICE** 2 I, Robert S. Apgood, do hereby certify that on the 17th day of May 2010, I caused true 3 and correct copies of the following: 4 5 1. Plaintiff T-Scan Corporation's Surreply To BPA Technologies, Inc.'s Motion To Dismiss For Improper Venue (Rule 12(b)(3)) Or In The Alternative Request 6 7 To Transfer Venue Pursuant to 28 U.S.C. § 1404; and 2. this Certificate of Service 8 to be served on: 9 Venkat Balasubramani 10 Focal PLLC 8426 40th Ave SW 11 Seattle, WA 98136 12 Fax: 206-260-3966 13 E-mail: venkat@focallaw.com 14 by filing a copy of same with the Clerk of the Court via the Court's CM/ECF system. By 15 virtue of rule of the court and his agreement with the court, the above-named attorney will 16 receive notification of the filing and access to a copy of same. 17 I declare under penalty of perjury under the laws of the United States of America that 18 the foregoing is true and correct. Executed at Seattle, Washington, 19 DATED this 17th day of May 2010. 20 CarpeLaw PLLC 21 s/Robert S. Apgood WSBA # 31023 22 CarpeLaw PLLC 2400 NW 80th Street #130 23 Seattle, WA 98117-4449 24 Telephone: (206) 624-2379 Facsimile: (206) 784-6305 25 E-mail: rob@carpelaw.com 26 CARPELAW PLLC

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